

REMARKS

Amendment to the Claims

Claims 118 and 123 have been amended to correct typographical errors.

Restriction Requirement

In the Office Action mailed on June 24, 2009, the claims were divided into four groups:

Group I, claims 115 and 118, drawn to a viral vector composition;

Group II, claims 116 and 125, drawn to a bacteriophage composition and a kit comprising such composition;

Group III, claim 120, drawn to a method for treating a mitochondrial disease using a vector encoding a functional mitochondrial polypeptide; and

Group IV, claims 122-124 and 127, drawn to a method of producing an mtDNA depleted cell using an siRNA.

In response, Applicant elects Group I, with traverse. Claims 115 and 118 encompass the elected invention.

The Examiner has improperly applied the Unity of Invention requirement under PCT rule 13.1 and 13.2, citing to restriction requirements relevant to national stage applications i.e., MPEP §§ 806.05(j) and (h) (see page 3 of office action mailed June 24, 2009). Restriction practice pursuant to 37 CFR § 1.141 - § 1.146) is not applicable in national stage applications submitted under 35 U.S.C. § 371. The basic principle for a unity of invention is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept. A group of inventions is considered linked to form a single

general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature.

The claims are based on the discovery by Applicant of compositions for introducing polynucleotides into a cell without using receptor mediated localization techniques, and targeting the polynucleotides to specific organelles. This is accomplished by incorporating a protein transduction domain (PTD) in combination with an organelle localization/targeting signal on a vector, for example a viral vector or a bacteriophage. Groups I and II are linked by the same inventive concept. Groups III and IV are process claims which use the compositions in Group I or II.

With respect to claim 123, the Examiner has improperly restricted the Markush group of siRNA's because they are considered to be unrelated. Applicant respectfully disagrees. The Examiner's attention is directed to MPEP § 8023.01(II) which states "Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect". The siRNA's listed in Table 3 are connected in effect i.e., they possess one property in common. They are small interfering RNA's for targeting the same gene, the POL γ gene (see the specification at least at page 50, lines 29-31). Thus, they all down regulate the same gene. Therefore, the Examiner's allegation that the SiRNA's are unrelated is unfounded (Office Action mailed June 24, 2009, page 8); all that is required is that there be a disclosed connection in at least one of design, operation or effect.

Applicant respectfully requests that the restriction requirement be withdrawn. (See MPEP § 1893.03(d)).

The Examiner required an election of species for initial examination.

(a) with respect to a specific organelle localization signal, Applicant elects SEQ ID NO. 62.

(b) with respect to a specific coding sequence encoding one of the many proteins such as those recited in claim 119, Applicant elects the coding sequence for humanin.

(c) With respect to one of the antisense sequences listed in Table 3, Applicant elects SEQ ID Nos. 198, 200, 201, 203, 204, 206, 207, 209, 210 and 211 for initial prosecution.

Favorable consideration of claims 114-127, as amended, is earnestly solicited.

Respectfully submitted,

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